

works.” That was the President in Miami a couple of years ago. He is right—that isn’t how it works. Apparently that wasn’t enough to stop him from pursuing the kind of partisan overreach he once described as “ignoring the law” and “unwise and unfair.” It didn’t keep him from doing that anyway. Maybe he didn’t anticipate that a Federal district court would issue a preliminary injunction to prevent him from moving forward. Maybe he didn’t expect that a Federal appeals court would uphold that ruling.

But now the Supreme Court will hear arguments in this case later this month on core constitutional principles like the separation of powers and the duty to take care that the laws are faithfully executed. That is why I led a group of 43 Republican Senators yesterday in filing an amicus brief in support of the challenge to this overreach—a challenge brought by a majority of America’s Governors and attorneys general from across our country. As we highlighted in the brief, the administration’s Executive action “stands in stark contravention to Federal law and to the constitutional principle of the separation of powers.” It is also an “explicit effort to circumvent the legislative process.”

So, look, whether Republicans or Democrats, this kind of partisan overreach should worry all of us no matter who is in the White House because not only is the President’s blatant refusal to follow the law an extraordinary power grab, it is a direct challenge to Congress’s constitutional authority and a direct attack on our constitutional order.

#### WAR ON TERROR

Mr. MCCONNELL. Mr. President, earlier this year I noted that the next Commander in Chief will assume office confronting a complex and varied array of threats. I observed that after 7 years of the Obama administration delaying action in the War on Terror, the next administration would need to return to the fight and restore our role in the world. Among many other things, that means we must return to capturing, interrogating, and targeting the enemy in a way that allows us to defeat terrorist networks because let’s remember that during his first week in office, the President issued a series of Executive orders that collectively undermined the capability of our intelligence community and military to combat terrorism.

Yesterday the Defense Department confirmed that two of Al Qaeda’s former explosives experts were transferred from the secure detention facility at Guantanamo Bay to Senegal. Both detainees had long records of supporting Al Qaeda. According to records that have been made public, one of those detainees, a former associate of Osama bin Laden, is likely to reengage in hostilities. The other detainee was previously assessed as likely to return

to the fight. This comes at a time when Al Qaeda in the Arabian Peninsula has exploited the war in Yemen to secure a safe haven and the al-Nusra Front within Syria is exploiting the civil war there to carry on Al Qaeda’s mission. This is precisely the wrong time to send experienced, hardened fighters back into the conflict.

We must use the remaining months of the Obama administration as a year of transition to better posture our military to meet the threats we face, not make it more challenging for the next President, regardless of political party. Actually, there have been encouraging changes within the administration recently, such as programs presented in the budget request by the Secretary of Defense to address Chinese and Russian aggression, a public recognition by the Chairman of the Joint Chiefs of the threat posed by ISIL in Libya, more focus on the need to rebuild a nuclear triad, General Campbell’s statement that a larger force must be left in Afghanistan, and the deployment of the expeditionary targeting force to Iraq. This is the wrong time for the administration to release terrorists who are likely to return to the fight.

#### RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

#### FAA REAUTHORIZATION BILL

Mr. REID. Mr. President, this side of the aisle also hopes that we can move through the FAA bill, which is important to get done. We just have to make sure we do it right. There are lots of things we need to do. I think that the bill coming from the committee, led by Senators THUNE and NELSON, is a good, basic outline for us to proceed on this matter.

#### IMMIGRATION AND INTERROGATION OF GITMO DETAINEES

Mr. REID. Mr. President, I wish to follow up on a couple of statements that were made by my friend the Republican leader. Senator MCCONNELL mentioned immigration. In the last Congress we worked very hard together in a bipartisan fashion to form a good, comprehensive immigration reform bill. We passed it, but due to the power of the tea partiers—or, as Speaker Boehner referred to them, “the crazies”—they didn’t have a vote in the House. If they had voted on that legislation, it would have passed. Democrats would have voted for it, and there were enough Republicans who would have voted for it. That would have been a big vote out of there, but it didn’t happen, so the President had to do something on immigration, and he laid the groundwork. He spoke at the State of the Union Address and basically

said: Since you are not passing any legislation, I will have to use my Executive power in order to get things done. He then proceeded to prioritize what he wanted to do. He issued the order that was so important to boys and girls, called a deferred action, which allowed DREAMers to stay in the country, and that was the right thing to do. He also prioritized deportations by going after criminals, not families, and enforcing the law. He has done a very good job.

I think it is also very important to note that the administrative actions the President has taken are nothing unique. We can go back to the days of Theodore Roosevelt, a good Republican President who did a lot of stuff administratively.

On his remarks about getting involved in the fight again—I am paraphrasing what he said—that we have to get back to the interrogation we did before, we know that torture was quickly eliminated. That effort was led by a lot of people, not the least of whom was someone who has been tortured, a Member of the U.S. Senate, JOHN MCCAIN. He has spoken out very admirably, and as only he can, about how bad torture is. And the facts indicate that torture doesn’t get any new information anyway; there are other ways to get that information.

#### FILLING THE SUPREME COURT VACANCY

Mr. REID. Mr. President, the senior Senator from Iowa, who is chairman of the Judiciary Committee, came to the floor yesterday afternoon in an attempt to divert attention away from that committee and his failure to do his job. He is not doing his job as chairman of that committee. He hoped to do that by focusing on me for objecting to a bill that would expand the subpoena powers of certain government appointees called inspectors general, but his efforts failed. People weren’t looking at me; they were looking at the work not done by the Judiciary Committee.

I objected to that bill because that legislation was really a legislative overreach, just as my friend the senior Senator from Iowa continues his overreach by turning the Senate Judiciary Committee into, for example, a Benghazi committee—a narrowly partisan committee masquerading as an independent party. It is the same theory that had Secretary Clinton spending 11 or 12 hours before the committee during the course of 1 day. That hearing was a flop because of her assertiveness, her direct answering of questions, and her physical and emotional strength, standing and sitting during that time.

My friend’s tenure as Judiciary Committee chair has been reduced to one stunt after another. One of his stunts included demanding maternity leave records of one of Secretary Clinton’s staffers. Another political stunt was blocking the confirmation of State Department Legal Adviser Brian Egan,

and yet another political stunt was blocking the promotions list of career Foreign Service officers. And his latest political stunt is preventing the Senate from doing its constitutional duty in considering President Obama's Supreme Court nominee, Merrick Garland. So even though the senior Senator from Iowa hopes to divert attention away from this disappointment, that is his Republican Judiciary Committee, the people aren't easily fooled.

The people of Iowa and the rest of the country certainly aren't buying Senator GRASSLEY's political charades. This morning the Des Moines Register, the largest newspaper in Iowa, published another scathing editorial regarding Senator GRASSLEY's unprecedented obstruction of the Supreme Court nominee. The editorial highlights the fact that because of the Supreme Court vacancy, the highest Court in the land is now stuck in a rut of 4-to-4 decisions—a stalemate. This is what the Des Moines Register editorial said, and I quote:

Americans might need to get used to deadlocks, thanks to Senator Chuck Grassley. The head of the Senate Judiciary Committee seems just fine with stalemate.

Now the senior Senator from Iowa may be content with gridlock in the Supreme Court, but the American people simply aren't. They are not content with the way the chairman continues to use one of the most prestigious, independent, and powerful committees to carry out political warfare. So maybe he should spend less time complaining about me and more time simply doing his job.

Every day, more and more Senators are meeting with President Obama's Supreme Court nominee, Chief Judge Merrick Garland, as well they should. According to the senior Senator from Utah, "fulfilling that role [of advice and consent] requires us to evaluate a nominee's qualifications for the particular position for which she has been nominated." We know that was when they were looking at Sotomayor and Kagan, who are on the Court. That is why every Senator, using the same logic as my friend from Utah—Republican, Democratic—should meet with Judge Garland.

This week he has a full slate of meetings scheduled with Senate Democrats. By the end of the week, every Democratic member of the Judiciary Committee will have met with President Obama's nominee. To date, 16 Republicans have either met with Judge Garland or indicated they are willing to do so in the future. Some even have meetings scheduled: Senators AYOTTE, BOOZMAN, CASSIDY, COCHRAN, COLLINS, FLAKE, GRASSLEY, INHOFE, JOHNSON, KIRK, LANKFORD, MURKOWSKI, PORTMAN, RISCH, ROUNDS, and TOOMEY. These are all Republican Senators who have said publicly that they are going to meet with him. I think that is a step in the right direction, and I think it really speaks volumes.

Take for example Senator INHOFE and Senator LANKFORD. I am sure they

have in their mind the outstanding work that Garland did when he was U.S. assistant attorney. He led the charge. No one questions his terrific, outstanding prosecution of that man who killed who knows how many people in Oklahoma with that bomb, for which, of course, eventually, he was given the death penalty.

This is a good man. Judge Garland is a good man. In every court he goes to, Democrats and Republicans speak highly of him—Chief Justice Roberts, among others. So I was disappointed last week when some Republican Senators, such as MURKOWSKI and MORAN, abandoned their previous support for agreeing to consider Judge Garland's nomination. Senator MORAN's backtracking is especially alarming because it appears to be the result of a multi-million dollar campaign urging the Senator to reverse his support for a hearing for Judge Garland. As has been reported by the Topeka Capital-Journal, Senator MORAN's about-face came in response to a backlash from the Koch brothers. I quote directly from the article:

On March 21, Moran told a small crowd in Cimarron, "I have my job to do," and "I think the process ought to go forward." Though he made it clear that Garland likely wouldn't be worthy of his vote, the comments indicated hearings should be held for the judge.

But they went on to say more.

Within a few days, Moran's comments sparked backlash from conservative groups. The Judicial Crisis Network announced it was putting the finishing touches on an advertising campaign bashing Moran, and the Tea Party Patriots Citizens Fund said it was considering backing a primary challenger.

U.S. Representative Mike Pompeo, a fellow Kansas Republican, publicly called on Moran to reconsider, a rare criticism of Moran from a fellow member of the Kansas congressional delegation. The criticisms eventually reached bizarre heights when the Traditional Values Coalition compared Moran to Judas Iscariot.

[The] chief counsel of the Judicial Crisis Network said Friday she was pleased to see Moran changed his mind.

Well, I guess you could say he changed his mind. MORAN was meeting with Garland and holding confirmation hearings until the Judicial Crisis Network and the tea party and the Koch brothers threatened him. It will surprise no one to learn that the Koch brothers and their dark money helped fund these radical organizations more than anybody else in the world. The Kochs are notorious for bullying anyone who stands in their way.

There is, without any question, oligarchs in the land, the first ones I have known in America. They are the Koch brothers. If they are successful in the splurging of their vast wealth and accomplishing what they set out doing in this campaign, I feel very, very bad for our country. They will be talking about us the way they talk about Russia—the oligarchy that is there. We are going to have one and the same.

Now, we must not forget how the Koch brothers' minions tried to intimi-

date investigative journalist Jane Mayer because she dared to expose the Kochs' attempt to buy our democracy. Her book, called "Dark Money," is on the New York Times bestseller list, and all over the country people are buying that book. Why? Because it is an insight into two brothers who are trying to buy America. Charles and David Koch used their fortune and their tremendous clout to force Senator MORAN to back down from his position. Publically, I can't imagine how one of us, a Senator, could be forced to do that in the manner that he was. All of this is because the junior Senator from Kansas dared to meet with the Supreme Court nominee. He dared to suggest that Garland deserved a hearing. He dared to do his job.

So is this now what the Republican Party has become—a party dictated by menace and intimidation? All you have to do is look at what is going on with the Republican Presidential nomination. That answers the question itself.

Some 30 years ago, though, Senator GRASSLEY said the Judiciary Committee "has the obligation to build a record and to conduct the most in-depth inquiry that we can" on Supreme Court nominees. Now the Republican leader, CHARLES GRASSLEY, have twisted the arms of the Republican Judiciary Committee members, compelling them to sign a loyalty pledge and forcing them to refuse to consider the President's Supreme Court nominee. Regrettably, Senator MORAN is just the latest Republican Senator who has allowed himself to be pushed around, to be intimidated by money.

Instead of caving to the Republican leader and the Koch brothers, it is time for the Republican Senators to take a stand and do their job. I hope the remaining Republican Senators who said they will meet with him will go ahead and do so and will stand firm. I hope they will meet with Judge Garland and take the next step in the process—to hold confirmation hearings. As it was reported by the nonpartisan Congressional Research Service, the average wait for the Supreme Court nominees, from nomination to hearing, has been 42 days. According to that timeline, Chairman GRASSLEY and his committee should begin confirmation hearings for Judge Garland April 27.

Last week, Democrats on the Senate Judiciary Committee sent a letter to the Republican leader and Chairman GRASSLEY calling on them to abide by this traditional timeline and hold a hearing by the 27th. I am very proud of the Democrats on the Judiciary Committee for doing this. That is what the American people want. They want Republicans to stop counting on the most extreme forces within their party and just do their job. That is all we are asking—as simple as that.

Mr. President, will the Chair announce what the Senate is scheduled to do the rest of the day.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

## AMERICA'S SMALL BUSINESS TAX RELIEF ACT OF 2015—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to H.R. 636, which the clerk will report.

The bill clerk read as follows:

Motion to proceed to Calendar No. 55, H.R. 636, to amend the Internal Revenue Code of 1986 to permanently extend increased expensing limitations, and for other purposes.

The PRESIDING OFFICER. The assistant Democratic leader.

## NOMINATION OF MERRICK GARLAND

Mr. DURBIN. Mr. President, there is an old verse that reads, if I remember correctly, as follows: While I was going up the stair, I met a man who wasn't there. He wasn't there again today. I wish that man would go away.

That man in the U.S. Senate is Merrick Garland, a person whom I am sure the Republican leadership wishes would just go away. But he is not going to go away.

Merrick Garland is the nominee whom President Obama has sent forward to fill the vacancy on the Supreme Court occasioned by the untimely death of Antonin Scalia. In sending that name forward, President Obama was meeting his constitutional responsibility. Article II, section 2 of the U.S. Constitution states clearly that the President shall—shall—nominate a person to fill a vacancy on the U.S. Supreme Court. It goes on to say that the responsibility of the Senate is to provide advice and consent to Supreme Court nominations. It is very clear. The men who wrote the Constitution understood the importance of filling a vacancy on the U.S. Supreme Court, and they understood it to be so important that they mandated that the President send the nominee forward to fill that vacancy.

You can read that Constitution from start to finish and never find the rationale being used by Senator McConnell, the majority leader of the Senate, to stop that nomination from being considered in the Senate. There is no argument made in the Constitution—nor has there ever been an argument made—that because the President is in the last year of his 4-year term, he no longer has a constitutional responsibility to fill a vacancy on the Supreme Court. In fact, never—underline never—has the Senate refused a hearing to a nominee who has been sent forward by a President of the United States to fill this important vacancy. It speaks volumes that Senator McConnell, the Republican leader, has decided—has taken it on himself—to stop the Senate from considering the President's nominee.

It is an embarrassing position to take for many of his colleagues. Look at what they are going through. Republican Senators who went home over this Easter break—many of them—went to town meetings where people asked this very basic question: Senator, why is it that you won't do your job? Why won't you even give a hearing to this man who was sent by the President for consideration by the Senate to fill this important vacancy?

It is a hard question to answer if you take the position of Senator McConnell, the Republican leader, because the answer is that, basically, he is arguing that this President has no authority—no authority to fill this vacancy. Senator McConnell argues that we should hold this vacancy open for the rest of this calendar year into next year so that a new President—whatever that might be—would have the power to fill this vacancy. He argues that the American people will speak through this next election as to a new President and that person should have the authority.

Well, what we discovered over the course of the last several weeks is this isn't about giving the American people a voice in choosing to fill that vacancy; it is about giving two individuals, the Koch brothers, the decision to fill that vacancy. These brothers have decided it is in their best interests—their political interests, their economic interests, whatever it may be—to keep this spot vacant on the U.S. Supreme Court in the hopes that a Republican Presidential candidate will win the election and fill the Court vacancy with the blessing of the Koch brothers. So Republican Senators are going back to their home districts and States, basically facing the electorate in their home States, and finding it impossible to justify avoiding any consideration of this nominee.

It got more difficult this morning.

I ask unanimous consent that this article from the Washington Post be printed in the RECORD in its entirety. The Washington Post has reported that U.S. Appeals Court Judge Merrick Garland is getting a boost for his Supreme Court nomination from some of the lawyers who know him best—his former law clerks. It goes on to say that 68 former law clerks for this judge have written to Members of Congress recommending him based on their personal experience of working professionally with him.

Let me read this passage from their letter:

There are not many bosses who so uniformly inspire the loyalty that we all feel toward Chief Judge Garland. Our enthusiasm is both a testament to his character and a reflection of his commitment to mentoring and encouraging us long after we left his chambers. He has stood by our side during the happiest moments of our lives—quite literally, having officiated the weddings of seven of his former clerks. He has welcomed us and our growing families into his home. He is a constant source of career advice and guidance. And he has offered love and sup-

port in the dark times, too, when we have suffered setbacks, losses, and uncertainty.

This article one might expect from his clerks saying what a good person he is, but they have gone out of their way to suggest to the Senate that a person of this quality and this integrity should be treated fairly—fairly.

I listened to some of the comments that are being made on the Republican side about this man, and it is a long way from fairness. What they are saying to him is we don't care about where you came from. We don't care about your education. We don't care about your professional qualifications. We don't care about your career on the bench. We care that you have been nominated by President Barack Obama, and as far as Senator McConnell is concerned, enough said.

If Barack Obama nominates this man, Senator McConnell has made it clear he will deny to him something that has never ever been denied to a Supreme Court nominee in the history of the United States of America: a fair hearing.

That is why it is painful for a lot of Republican Senators to go back and face audiences. The partisans in the audience come in, in a predictable state, with Republicans saying: Hold the line. Don't let Obama act like a President of the United States. We want him to go away. Democrats come in and ask: Can't you at least give this man a hearing? I would say to my Republican colleagues: Listen to the people who view themselves as Independents in this country, folks who don't carry a party label. They are saying overwhelmingly that Merrick Garland is entitled to a hearing before the U.S. Senate. He is an extraordinarily well-qualified man. There is no credible justification to refuse to give him a hearing.

Merrick Garland was born in Chicago. His father ran a small business. His mother volunteered in the Rogers Park neighborhood. He was the grandson of immigrants who fled anti-Semitism in the Pale of Settlement in Russia. They came to America in the early 1900s. Judge Garland grew up in Lincolnwood, IL. He graduated at the top of his class at Niles West High School in Skokie. He earned an undergraduate and law degree from Harvard. He was a law clerk to Judge Henry Friendly on the Second Circuit and to Supreme Court Justice William Brennan.

He had a distinguished career at the Justice Department. They sent Merrick Garland down after the Oklahoma City tragedy, when there was a terrible incident—a domestic terrorist bombing—that killed and maimed so many people. The prosecution of that accused terrorist was the highest priority for the Department of Justice. They had to get it right, not just for the cause of justice but for the victims and their families. They had to get it right on this prosecution. So they sent their very best prosecutor, Merrick